85-878

Supreme Court, U.S.
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No.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO,

Petitioners

v.

WILLIAM K. BUNYAN,

Respondent.

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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## QUESTION PRESENTED

Does the retrospective application of section 8113(b) of the Guam Gov't Code serve legitimate governmental interests?

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WILLIAM K. BUNYAN,

Respondent.

# PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Ninth Circuit entered in this case on September 3, 1985.

## OPINIONS BELOW

The Court of Appeals for the Ninth Circuit reversed the summary judgment of the United States District Court for the District of Guam and remanded the case for further proceedings. The opinion of the Court of Appeals [APPENDIX A] is not yet reported. The opinion of the District Court [APPENDIX B] is not officially reported.

## JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was rendered on September 3, 1985. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. § 1254(1).

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Const. amendment 14 (applicable part):

> No state shall . . . deny any person within its jurisdiction the equal protection of the laws.

Title IV, Guam Gov't Code § 8113:

> Any bona fide resident of Guam, who receives his graduate or undergraduate degree from an accredited

> institution and is employed by the government of Guam after obtaining such degree, may claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, or any lesser period he may elect to claim, by paying to the Fund the appropriate member's and employer's shares based on the period of credit sought to be obtained and his salary when he begins employment with the government of Guam; provided, however, that this Section shall apply only to those persons:
>
> (a) who received their degrees after June 1, 1945;
>
> (b) who were bona fide residents of Guam at the time they began their undergraduate studies; and
>
> (c) who had been employed by the Government for at least ten (10) years as full-time, locally hired employees.

## STATEMENT OF THE CASE

The Respondent, William K. Bunyan, is a teacher employed by the Government of Guam. He has been so employed since 1963. In 1958, the respondent obtained his Bachelor of Science degree from Kansas State College, and in 1959 he obtained his Master of Science degree from Kansas State University. At the time he obtained the degrees,

the Respondent was a resident of the State of Kansas.

In 1978 the Legislature of Guam enacted § 8113(b) of the Government Code Annotated. Section 8113(b) gives a retirement credit to Government of Guam employees if, and only if, they were residents of Guam when they started their undergraduate studies.

Section 8113(b) applies both prospectively and retrospectively. The statute's retrospective application distinguishes between two classes of present Guam residents that began working for the Government of Guam before 1978. One class of present Government of Guam employees resided in Guam when they started their undergraduate studies. Section 8113(b) operates retrospectively to give this class added retirement credit. The other class of present Government of Guam employees did not reside in Guam when they started such studies. Section 8113(b) denies this class additional retirement credit. Respondent is in the latter class.

On June 7, 1984, the Respondent filed suit in the District Court for the Territory of Guam contending that the retrospective distinction made by § 8113(b) is violative of the Equal Protection Clause of the United States Constitution. In his action Respondent specifically maintained that § 8113(b) could not withstand scrutiny under the rational basis test. The District Court granted summary judgment in favor of the present Petitioners, finding that the classification created by the residency requirement contained in § 8113(b) was reasonably related to the purpose of the statute and did not violate the equal protection clause. On September 3, 1985, the United States Court of Appeals for the Ninth Circuit reversed the District Court on the basis that a distinction between classes of bona fide residents cannot be rationally related to a legitimate purpose.

## REASONS FOR GRANTING THE WRIT

### I

### THE QUESTION PRESENTED IN THIS CASE IS OF THE GREATEST IMPORTANCE TO THE TERRITORY OF GUAM IN THE IMMEDIATE FUTURE AND IN THE LONG-TERM.

The immediate effect of the decision by the Ninth Circuit Court of Appeals is to create the possibility of substantial additional liability for the Guam Retirement Fund. The decision would potentially allow large numbers of previously unqualified individuals to purchase additional retirement credit. Such a situation would impose additional liabilities on the Fund for which it is ill-prepared. Indeed, the decision of the court below might well compel the Guam legislature to amend the statute and to remove the credit provision altogether. The provision in question has served a legitimate governmental purpose since its enactment in 1978, but the additional burden resulting from the lower court's decision might very well prove to be its undoing.

In addition to the immediate effect of the Ninth Circuit decision, there may also be long-term effects. It is only natural that the Government of Guam wants to encourage its residents to seek higher education and to then return to Guam and enter public employment once they have done so. By doing so, Guam may keep its best people from leaving for better opportunities elsewhere. Moreover, long-time residents are generally more familiar with local problems and concerns and are therefore more capable employees than those who grew up elsewhere. Statutes of the type involved herein serve these purposes.

The result reached by the Ninth Circuit Court of Appeals, however, casts into doubt any such effort by the Government of Guam. The court's opinion effectively bars Guam from providing similar incentives and benefits to their residents, not only in this case, but in any situation in which the benefits are open to Guam residents alone. This may leave Guam powerless

to provide such incentives or, at the very least, places the Government in a quandary as to what programs might be constitutional. Clearly, the matter is of great importance to the Territory of Guam as a whole and deserves the Court's consideration. Puerto Rico v. Rubert Co., 309 U.S. 543, 544 (1940) (writ granted where "matter of great importance to Puerto Rico").

II

THE DECISION OF THE NINTH CIRCUIT COURT OF APPEALS MISAPPLIES THIS COURT'S DECISIONS IN ZOBEL V. WILLIAMS, 457 U.S. 55 (1982), AND HOOPER V. BERNALILLO COUNTY ASSESSOR, 53 U.S.L W. 4827 (June 24, 1985).

The opinion of the Court of Appeals relied heavily on two decisions of this Court, Zobel v. Williams, supra, and Hooper v. Bernalillo County Assessor, supra. In Zobel, this Court found unconstitutional a statutory scheme by which the State of Alaska distributed income from its natural resources to the adult citizens of the state in varying amounts, based on the length of each

citizen's residence. The State argued that the distinctions drawn under the plan were designed to recognize various past contributions of the residents, but this Court ruled that such an objective was not a legitimate state interest.

In Hooper, a New Mexico statute provided a $2000 property tax exemption for veterans of the Vietnam War, but the exemption was limited to veterans who were residents of New Mexico before May 8, 1976. The State claimed that the exemption encouraged veterans to settle in New Mexico and also served as an expression of gratitude to its citizens. The Court acknowledged that a state may legitimately reward military veterans for their service but ruled that the exemption did not serve this purpose since the statute arbitrarily distinguished between veterans who were residents before May 8, 1976 and those who became residents thereafter. The Court therefore concluded that the exemption was actually a reward for past contributions by residents and therefore

failed under Zobel.

The court below applied these two cases even though there are substantial differences between these cases and the instant one. In this case, the extra retirement credits available under the statute serve not only to reward those who have already satisfied the statutory requirements when the statute was enacted, but it also provides an incentive for Guam residents who pursue higher education outside of Guam to return to Guam and enter or continue government employment after completing such higher education. Moreover, unlike the arbitrary dates set in Zobel and Hooper, the Guam statute provides the benefit to people who were residents at the time they began their undergraduate studies. This point in time is significant since the statute provides incentive to Guam residents to further their education and to then return to government employment in Guam. This purpose is not served if the statute is applied to those who have become residents only after receiving their education.

The retrospective application of this statute is limited to those individuals who would have satisfied the statute if it had been in effect at the time they started their undergraduate studies. Thus, the retrospective application merely serves to create equitable treatment between those who started their studies before the enactment of the statute and those who started after that date. This is only logical since all of these residents, by returning to Guam and entering government service, risked the same potential hardship of missing more lucrative employment outside of Guam, regardless of when they started their studies. By the same token, the exclusion of those such as Respondent is consistent with this purpose since neither the Respondent nor those similarly situated would have qualified under the statute regardless of when it was enacted. The Respondent and those in his position did not risk the same potential hardship as did those who have qualified under the statute. In the same way, those who have never resided in

Guam before but enter government service there now with full knowledge of § 8113 have not incurred the same potential hardship as have those who were residents of Guam after the enactment date, left Guam for higher education and then returned to Guam to enter government service. The only difference between the current application of § 8113 and its retrospective application is that those affected by the provision's retrospective application had no knowledge of their future eligibility (or lack thereof) at the time they entered Guam government service. Such difference in knowledge is irrelevant to the conclusion that, whether § 8113 is currently or retrospectively applied, Guam has a rational basis for not awarding extra pension credit to those who were not residents of Guam at the time they commenced their undergraduate studies. Guam's desires to both reward those who qualified prior to the enactment of § 8113 (retrospective application) and to encourage those who are eligible to

receive the added benefits if they return to Guam and enter government service (current application) represent the means to fulfill a legitimate government purpose: the recognition of past potential sacrifice and the encouragement of future potential sacrifice which has resulted and will result in the employment of better qualified people for Guam government service.

The court below also misapplied Hooper in a second respect. In Hooper, this Court acknowledged that rewarding a veteran for past contributions is "plainly legitimate," but added that rewards must be distributed according to a rational standard. 53 U.S.L.W. at 4829-30. The rationale for granting such rewards is grounded on a 'desire to compensate in some measure for the disruption of a way of life . . . and to express gratitude . . . .'" Id. at 4830 (quoting Russell v. Hodges, 470 F.2d 212, 218 (2d Cir. 1972)). Thus, this Court in Hooper has accepted the very same rational basis for the retrospective application

of § 8113 which is being asserted by the Petitioners here. Again, the valid distinction by which this recognized rational basis is served only when § 8113 is retrospectively applied to those who were residents of Guam when they began their higher education and not to those in the Respondent's position must be emphasized. Because of Guam's unusual situation, a decision to seek higher education may entail a substantial disruption of the individual's way of life. Moreover, a decision to return to Guam after receiving that education and to work for the government of Guam may, as mentioned, also constitute a sacrifice. On the other hand, this reasoning does not apply to those who were residents elsewhere when they started their undergraduate studies, since it is unlikely that their lives were disrupted to the same degree. Additionally, a resident of Guam is more likely to return to Guam for altruistic reasons than is someone who never lived there before.

Accordingly, in the instant case, like the veteran's preference cases, the government is compensating the employees for the disruption of their lives and is expressing its gratitude. Unlike Hooper, however, there is a rational distinction between those who were entitled to the extra benefits and those who were not. Since the court of appeals failed to acknowledge these differences, it has misapplied Hooper and Zobel.

The third principal case discussed by the court below, Soto-Lopez v. New York City Civil Service Commission, 755 F.2d 266 (2d Cir.), review granted, No. 84-1803, 534 U.S.L.W. 3903 (July 1, 1985) cannot be relied upon to preclude the distinction made under § 8113 for the same reason that Hooper cannot be so relied upon. In Soto-Lopez, the plaintiffs challenged a distinction made under N.Y. Civil Serv. Law § 85, by which a New York resident who was a veteran of the armed forces and passes a civil service examination, would receive extra points if he had been a New

York resident at the time he entered the armed forces. The court could find no legitimate state purpose served by the exclusion of those veterans who were not New York residents at the time of their entry into the armed services. The court could find no distinction between the benefit the state received from the national military service of one who was a New York resident at the time of induction and one who was not. Again, the validity of the distinction made under the present facts by § 8113 is clear. Those who were residents of Guam at the commencement of their undergraduate studies abroad, potentially made a sacrifice by returning to Guam and entering government service, a sacrifice which those who became residents of Guam for the first time upon entering government service most likely did not make. Additionally, the Government of Guam could reasonably believe that it benefitted more substantially from the return of former residents for the purpose of entering government service than it did from the hiring of those who

had not been residents of Guam at the beginning of their higher education. It was in recognition of this greater sacrifice for the individual and greater benefit to Guam, that § 8113 was drafted to apply retrospectively only to those who potentially made the sacrifice and bestowed the benefit.

## CONCLUSION

It is clear that the decision made by the court below under the present facts is inconsistent with the decisions of this Court in Zobel and Hooper and with the decision of the Second Circuit Court of Appeals in Soto-Lopez. It seems evident that the court below has followed the recent trend of invalidating classifications based upon residency without sufficiently considering the distinctions which exist under the present facts. This court should address this problem in order to ensure that federal court decisions are consistent with prior decisions of this Court. First National Bank of Arizona v. Cities Service

Co., 391 U.S. 253, 259 (1968); National Labor Relations Board v. Great Dane Trailers, 388 U.S. 26, 31 (1967); Radiant Burners, Inc. v. Peoples Gas Light & Coke Co., 364 U.S. 656, 659 (1961).

WHEREFORE, Petitioners respectfully pray that a Writ of Certiorari be granted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three(3) copies of the foregoing Petition for Writ of Certiorari filed on behalf of Petitioners Luis M. Camacho, Don C. Warner, Bertha L. Duenas, Frank C. Cruz, and Jesus B. Paulino were duly served upon Respondent William K. Bunyan by placing same in the United States Mail first class postage pre-paid, certified return receipt requested, addressed to:

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APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

| | | |
|---|---|---|
| WILLIAM K. BUNYAN,<br><br>Plaintiff-Appellant,<br><br>vs.<br><br>LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ and JESUS B. PAULING,<br><br>Defendants-Appellees. | ) | C.A. No. 84-2766<br><br>D.C. No. CV-84-0028<br><br>OPINION |

On Appeal From the United States
District Court for the
District of Guam
The Honorable Cristobal C. Duenas,
District Judge, Presiding

Argued and Submitted June 13, 1985,
San Francisco, California

Before: SNEED, BEEZER, Circuit Judges,
and RAFEEDIE,* District Judge.

BEEZER, Circuit Judge:

This is an appeal from a summary judgment upholding the constitutionality of a Guam statute that grants retroactive retirement credit to

*The Honorable Edward Rafeedie, United States District Judge, Central District of California, sitting by designation.

local government employees who were Guam residents before they started college. Appellant challenges the district court's holding that the statute is rationally related to a legitimate governmental purpose. We reverse.

## FACTS

In 1978, the Guam Legislature enacted the following statute:

> Any bona fide resident of Guam, who receives his graduate or undergraduate degree from an accredited institution and is employed by the government of Guam, after obtaining such degree, may claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, . . . by paying to the Fund the appropriate member's and employer's shares . . .; provided, however, that this Section shall apply only to those persons:
>
> (a) who received their degrees after June 1, 1945;
>
> (b) who were bona fide residents of Guam at the time they began their undergraduate studies; and
>
> (c) who had been employed by the Government for at least ten (10) years as full-time, locally hired employees.

4 Guam Code Ann. § 8113. Appellant William Bunyan, a high school science teacher who moved

to Guam in 1963 after he had already finished college, meets all the statutory requirements for obtaining retroactive retirement credit except that he was not a Guam resident at the time he began his undergraduate studies. He was therefore denied such credit.

Appellant brought a civil rights action against appellees, the members of the Board of Trustees for the Government of Guam Retirement Fund. 42 U.S.C. § 1983. The complaint alleged that subsection (b) of the statute violates the Equal Protection Clause of the U.S. Constitution, and requested declaratory and injunctive relief. The district court granted summary judgment in favor of appellees, holding that the retrospective application of the statute to persons already employed by the local government was rationally related to the legitimate governmental purpose of

> express[ing] the gratitude of the Territory of Guam by conferring benefits to those Guamanian residents who enrolled in college, received an undergraduate or graduate degree, and returned to the Territory of Guam with their specialized

> knowledge, skill, and training to work for the Government of Guam, prior to the enactment of this statute.

Bunyan appeals.

ANALYSIS

The sole issue on appeal is whether the district court erred in holding that section 8113(b) is rationally related to a legitimate governmental purpose.

We may affirm the district court's order for summary judgment if, viewing the record in the light most favorable to appellant, there was no genuine issue of material fact and the appellees were entitled to judgment as a matter of law. State of Alaska v. United States, 754 F.2d 851, 853 (9th Cir. 1985). We review the order de novo. Id.

Absent a suspect classification or the infringement of a fundamental right, neither of which is alleged to exist here, the equal protection clause is offended only if the statute's different treatment of the two classes of local

government employees bears no rational relationship to a legitimate governmental purpose. See San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 40 (1973); Parks v. Watson, 716 F.2d 646, 654 (9th Cir. 1983). We may hypothesize the possible legislative purposes for enacting the statute, and must uphold it if any legitimate purpose is served. In re Lara, 731 F.2d 1455, 1460 & n.7 (9th Cir. 1984); Brandwein v. California Bd. of Osteopathic Examiners, 708 F.2d 1466, 1470-71 (9th Cir. 1983); Lamb v. Scripps College, 627 F.2d 1015, 1021 n.9 (9th Cir. 1980).

The district court granted summary judgment solely on the basis of Devereaux v. New York State Teachers' Retirement Board, 75 A.D.2d 277, 429 N.Y.S.2d 743, appeal denied, 51 N.Y.2d 705 (1980). That case upheld a New York statute that gave teachers retroactive retirement credit for military service provided they were New York residents at the time they began and ended such service. An intermediate

state appellate court found that

> the classification is substantially related to the object of the statute, which was the desire of the State of New York to express its gratitude to its sons who entered their country's service in time of war by conferring certain benefits to them to compensate them for the disruption of their way of life and, in many cases, of their employment by service in the armed forces.

429 N.Y.S.2d at 747. See also Regan v. Taxation with Representation of Washington, 461 U.S. 540, 551 (1983) ("Our country has a longstanding policy of compensating veterans for their past contributions by providing them with numerous advantages. This policy has 'always been deemed to be legitimate.'"); Personnel Administrator of Massachusetts v. Feeney, 442 U.S. 256, 265 (1979).

Although rewarding veterans for their past military service is a legitimate state purpose, the trend of recent decisions is to restrict both the types of past contributions that may be legitimately rewarded and the bases for distinguishing between favored and disfavored

classes.

In Zobel v. Williams, 457 U.S. 55 (1982), for example, the Supreme Court held that giving long-term residents larger cash dividends than newer residents as a reward for "contributions of various kinds, both tangible and intangible, which residents have made during their years of residency," was not a legitimate state purpose. 457 U.S. at 61, 63. Similarly, the Court has held that a state may not apportion welfare benefits according to the past tax contributions of applicants. Shapiro v. Thompson, 394 U.S. 618, 632-33 (1969). In fact, the parties have not cited a single case upholding rewards for past contributions other than military service.

Moreover, even if Guam has a legitimate interest in rewarding the past conduct addressed by the statute, two cases decided after the district court's ruling cast considerable doubt on the constitutionality of rewarding only those persons who were residents before engaging in the favored activity. In Soto-Lopez v. New

York City Civil Service Commission, 755 F.2d 266 (2d Cir.), review granted, 534 U.S.L.W. 3903 (U.S. July 1, 1985) (No. 84-1803), the Second Circuit considered a law which gave veterans who were New York residents at the time of their induction into the military extra preference points on their civil service examinations. The court held that rewarding or otherwise favoring only prior state residents for performing military service is not a legitimate state purpose, and that distinguishing between veterans who were residents at the time of their induction and those who were not is not rationally related even to admittedly legitimate state purposes. 755 F.2d at 268, 272, 274, 276-78.

Similarly, in Hooper v. Bernalillo County Assessor, 53 U.S.L.W. 4827 (U.S. June 24, 1985), the Supreme Court struck down a statute that granted a partial property tax exemption to Vietnam veterans who were state residents before May 8, 1976. The Court noted that the statute

"creates 'fixed, permanent distinctions between . . . classes of concededly bona fide residents' based on when they arrived in the State," 53 U.S.L.W. at 4829, and held that the classification did not bear a rational relationship to a legitimate state purpose. The Court reasoned that rewarding only prior or established residents for past military service is not a legitimate state purpose, and that such a distinction does not bear a rational relationship to the legitimate purpose of compensating all resident veterans for the sacrifices inherent in wartime military service. 53 U.S.L.W. at 4830. Moreover, although the Court expressly declined to consider the constitutionality of veterans' benefit statutes that condition eligibility on state residence at the time of induction into the military, it strongly implied that such statutes may also be unconstitutional in light of Zobel. See Hooper, 53 U.S.L.W. at 4830 n.11.

The statute in the case at bar also creates "fixed, permanent distinctions between

. . . classes of concededly bona fide residents." Zobel, 457 U.S. at 59. Even if Guam may legitimately decide to reward its residents who obtained a higher education and entered the Guamanian civil service, rewarding only "established" residents for such past conduct is not a legitimate purpose.[1/] See Hooper, 53 U.S.L.W. at 4830. Furthermore, the statute's distinction between different classes of resident civil servants with college degrees is not rationally related to the asserted goal of

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1/ Appellees assert that two other interests are served by the statute. The first, attracting to the Guamanian civil service persons who are well-educated, are familiar with local problems, or are committed to the future of Guam, fails because the statute does not rationally distinguish between more and less educated residents, between long-term and newer residents, or between committed and uncommitted residents. The second, the state's interest in limiting retroactive retirement benefits to those who have contributed more to the publicly-funded portion of the retirement plan through their taxes, was expressly held to be an illegitimate state purpose in Shapiro and Zobel.

rewarding, encouraging and compensating persons for the alleged sacrifices. We therefore hold that 4 Guam Code Ann. § 8113(b) violates the Equal Protection Clause.

The summary judgment is REVERSED and the case remanded for proceedings consistent with this opinion.

APPENDIX B

DISTRICT COURT OF GUAM
TERRITORY OF GUAM

| | |
|---|---|
| WILLIAM K. BUNYAN,<br><br>Plaintiff,<br><br>vs.<br><br>LUIS M. CAMACHO, DON C. WARNER, BERTHA L. DUENAS, FRANK C. CRUZ, and JESUS B. PAULINO,<br><br>Defendants. | CIVIL CASE NO. 84-0028<br><br>MEMORANDUM ORDER |

The facts are undisputed. Plaintiff William K. Bunyan obtained his Bachelor of Science degree from Kansas State College in 1958 and his Master of Science degree from Kansas State University in 1959. At the commencement of his studies for both his Bachelor and Master degrees he was a resident of the State of Kansas. In 1963, Plaintiff was employed by the Department of Education, Government of Guam, as a contract hire teacher. For at least the past 12 years the Plaintiff has been employed by the Government of Guam as a full-time, locally hired teacher. He is

currently teaching at George Washington High School in the Territory of Guam.

On June 7, 1984, the Plaintiff filed a complaint against the Defendants seeking a declaratory judgment that the actions of the Defendants pursuant to § 8113(b) of 4 Guam Code Annotated, prohibiting the Plaintiff from obtaining retirement credit for his undergraduate and graduate education on the grounds that he was not a resident of Guam when he started his studies, are illegal and unconstitutional as violative of the Equal Protection Clause of the United States Constitution as it is applied to Guam in Title 48 United States Code, § 1421b(n) and § 1421b(u). The Plaintiff also sought injunctive relief restraining the Defendants from enforcing or applying § 8113(b) to the Plaintiff.

On August 27, 1984, the Plaintiff filed a motion for summary judgment, and on September 14, 1984, the Defendants filed a cross-motion

for summary judgment. A hearing on both motions was held on September 20, 1984, and the court took the matter under advisement.

The sole issue before this Court is whether the retroactive application of § 8113 of Title 4 of Guam Code Annotated is violative of the Equal Protection Clause of the United States Constitution which provides:

> "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the Several States". [Art. IV, Section 2, Clause 1 of the U.S. Const. applicable to Guam under Title 48 USC § 1421b(n) and § 1421b(u).]

The Plaintiff contends that § 8113(b) imposes an unconstitutional residency requirement on the obtainment of educational retirement service credit. Section 8113 of Title 4 Guam Code Annotated states as follows:

> "§ 8113. Same: Credit for Education. Any bona fide resident of Guam, who receives his graduate or undergraduate degree from an accredited institution and is employed by the government of Guam after obtaining such degree, may

> claim retirement credit equal to the period of time, including vacations, which a full-time student would normally take to complete the program leading to the degree he received, or any lesser period he may elect to claim, by paying to the Fund the appropriate member's and employer's shares based on the period of credit sought to be obtained and his salary when he begins employment with the government of Guam; provided, however, that this Section shall apply only to those persons:
>
> (a) who received their degrees after June 1, 1945;
> (b) who were bona fide residents of Guam at the time they began their undergraduate studies; and
> (c) who had been employed by the Government for at least ten (years) as full-time, locally hired employees."

It is clear to this Court that the benefits conferred by the statute do not infringe or penalize the fundamental right to travel. Devereaux v. New York State Teachers' Retirement Board, 429 N.Y.S. 2d 743, 747 (App. Div., 1980). Thus, there is no need to strictly scrutinize the statute and find a compelling territorial interest to justify the constitutionality of § 8113(b).

The residency requirement under Subsection (b) of § 8113 is not per se unconstitutional

since it is not a durational residency requirement. And, the classification created by such residency requirement can be upheld as long as it is reasonably related to the purpose or object of the statute. Devereaux, Id at 747. The Plaintiff contends that the only purpose of the statute is to encourage Guam residents to attend college and return to the Territory of Guam to work for the Government of Guam. Thus, he argues that the statute is inapplicable when applied retrospectively because it cannot provide incentive to those who have already completed college and are employed by the Government of Guam. This Court would have to agree with the Plaintiff if that were the only purpose of the statute, however, the legislature of Guam has explicitly stated that this statute is to be applied retroactively. In other words, the legislature has demonstrated that the statute has a dual purpose. Not only does § 8113 provide incentive to Guam residents to obtain a college

degree and return to Guam to work for the Government of Guam, but it also expresses the gratitude of the Territory of Guam by conferring benefits to those Guamanian residents who enrolled in college, received an undergraduate or graduate degree, and returned to the Territory of Guam with their specialized knowledge, skill, and training to work for the Government of Guam, prior to the enactment of this statute.

The statute in the case at bar is very similar to the New York statute [§ 503(10) of the Education Laws of New York] in the Devereaux case, Id., whereby the State of New York granted military service credit for active duty in the armed forces of the United States to a full-time teacher who joined the retirement system prior to July 1, 1973, and was a resident of New York State at the time of entry into such service and at the time of discharge therefrom. The residency requirement of this New York statute was challenged by a retired New York teacher claiming credit for military

services rendered during World War II while a resident of New Jersey. The court in upholding the statute stated as follows:

> "The residency requirement of subdivision 10 of section 503 of the Education Law does not contain a durational disability, and the classification is substantially related to the object of the statute, which was the desire of the State of New York to express its gratitude to its sons who entered their country's service in time of war by conferring certain benefits to them to compensate them for the disruption of their way of life and, in many cases, of their employment by service in the armed forces." Devereaux, Id.

It is the decision of this Court that the classification created by the residency requirement contained in § 8113(b) is reasonably related to the purpose or object of the statute at issue and is not violative of the Equal Protection Clause of the United States Constitution.

The Plaintiff's motion for Summary Judgment is hereby denied and the Defendants' cross motion for Summary Judgment is hereby

granted.

IT IS SO ORDERED.

Dated this 23rd day of October, 1984.

/s/ Cristobal C. Duenas
CRISTOBAL C. DUENAS
Judge, District Court of
Guam